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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,433	10/11/2001	Robert Brainard	38667.0100	9096
7590	09/09/2005			EXAMINER
Damon L. Boyd Snell & Wilmer L.L.P. One Arizona Center 400 East Van Buren Phoenix, AZ 85004-2202			JEAN GILLES, JUDE	
			ART UNIT	PAPER NUMBER
			2143	
DATE MAILED: 09/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/975,433	BRAINARD ET AL.
	Examiner	Art Unit
	Jude J. Jean-Gilles	2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 20 June 2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-19 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-19 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

This Action is in regards to the Reply received on 20 June, 2005.

Response to Amendment

1. This action is responsive to the application filed on June 20th, 2005. Claims 1-2, 6, 9-10, 13, and 18-19 were amended. There are no newly added claims. Claims 1-19 are pending. Claims 1-19 represent a method and apparatus for a " Data mark and recall system and method for a data stream."

Response to Arguments

2. Applicant's arguments with respect to claims 1 and 2 have been carefully considered, but are not deemed fully persuasive. Applicant's arguments are deemed moot in view of the following new ground of rejection as explained here below, necessitated by Applicant substantial amendment (i.e., a method wherein the marker is separate from the data stream...) to the claims which significantly affected the scope thereof.

The dependent claims stand rejected as articulated in the First Office Action and all objections not addressed in Applicant's response are herein reiterated.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-17, and 19 are rejected under 35 U.S.C. 102(e) as being unpatentable by Srinivasan et al (U.S. Patent No. 6,357,042 B2).

Regarding claim 1: Srinivasan et al teach a data mark and recall system, comprising:

a data stream (*fig. 1, item 16; column 6, lines 1-7; column 5, lines 66-67*);

a marking system, ~~wherein said marking system notes including a marker~~ (*fig. 10, item 99*), separate from said data stream (*fig. 10, item 93*), indicating a particular point in said data stream corresponding to enhanced data content (*fig. 10, items 93, 95, and 99; column 18, lines 5-47 and specifically, lines 31-35*);

a recall system, wherein said recall system allows a user to retrieve said enhanced-data content separate from said data stream based on said marker (*column 31, lines 30-47*); and

an enhanced additional content data display (*column 32, lines 32-40*).

Regarding claim 2: Srinivasan et al teach a data mark and recall system in accordance with claim 1, further comprising a storage medium, wherein said marking system stores said marker to create ~~creates~~ a stored marker on said storage medium corresponding to said particular point for later recall (*fig. 8, item 63; fig. 10, item 91; column 18, lines 1-45*; .

Regarding claim 3: Srinivasan et al teach a data mark and recall system in accordance with claim 2, further comprising a review system, which allows said user to review said stored marker (*column 24, lines 62-67*).

Regarding claim 4: Srinivasan et al teach a data mark and recall system in accordance with claim 3, wherein said review system is at least one of a television, a computer, a PDA and a cell phone (*fig. 14, items 185, and 187-188; column 6, lines 25-26; column 24, lines 50-55*).

Regarding claim 5: Srinivasan et al teach a data mark and recall system in accordance with claim 1, wherein said data stream is a video stream (*fig. 1, items 11, and 16; column 5, lines 66-67; column 6, lines 1-3*).

Regarding claim 6: Srinivasan et al teach a data mark and recall system in accordance with claim 5, wherein said enhanced content comprises a static clip of a video scene corresponding to said particular point in said video stream (*fig. 14, items 187-188; column 24, lines 55-61; column 27, lines 1-3*).

Regarding claim 7: Srinivasan et al teach a data mark and recall system in accordance with claim 2, wherein said storage medium is located remotely from said user (*fig. 7, items 48a-n; column 13, lines 4-14, and 54-56*).

Regarding claim 8: Srinivasan et al teach a data mark and recall system in accordance with claim 2, wherein said storage medium is located locally to said user (*fig. 1, items 11, 13, and 14; column 6, lines 1-7*).

Regarding claim 9: Srinivasan et al teach a data mark and recall system in accordance with claim 2, wherein said enhanced additional content is stored on a remote enhanced additional content database (fig. 7, item 51; *column 13, lines 21-33*).

Regarding claim 10: Srinivasan et al teach a data mark and recall system in accordance with claim 2, wherein said enhanced additional content is stored on a local enhanced additional content database (fig. 7, item 13; *column 6, lines 4-7*).

Regarding claim 11: Srinivasan et al teach a data mark and recall system in accordance with claim 2, wherein said stored marker is data related to a point in time (*column 18, lines 8-11; it is important to note that synchronizing the marking means using a point in time that relates to the data*).

Regarding claim 12: Srinivasan et al teach a data mark and recall system in accordance with claim 2, wherein said stored marker is data related to a predetermined period of time (*column 17, lines 6-12; it is important to note that using a specific time interval is a predetermined period of time*).

Regarding claim 13: Srinivasan et al teach a data mark and recall system in accordance with claim 2, wherein said stored marker is data related to a temporally closest enhanced additional content point (fig. 10, items 93, 95, 97, and 99; *column 18, lines 22-35; it is important to note the role of the number/time marker generator in counting and associating individual frames in a serial fashion*.)

Regarding claim 14: Srinivasan et al teach a data mark and recall system in accordance with claim 2, wherein said stored marker is data related to a point in time and a source (fig. 18, items 53, and 63; *column 17, lines 45-51*).

Regarding claim 15: Srinivasan et al teach a data mark and recall system in accordance with claim 14, wherein said stored marker is data further comprising a user identifier (*column 32, lines 12-21; column 23, lines 1-5*).

Regarding claim 16: Srinivasan et al teach a data mark and recall system in accordance with claim 2, wherein said stored marker is data related to a geographic location of said user.

Regarding claim 17: Srinivasan et al teach a data mark and recall system in accordance with claim 2, wherein said stored marker is data related to a point in time (*fig. 18, items 53, and 63; column 17, lines 45-51*), a channel (*column 33, lines 59-67*) and a geographic location of said user (*column 20, lines 43-53*).

Regarding claim 19: Srinivasan et al teach a data mark and recall system in accordance with claim 1, wherein said enhanced additional content is retrieved synchronously with said marking (*column 30, 53-62*).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan et al (U.S. Patent No. 6,357,042 B2) in view of Allran et al (U.S. 5,625,845).

Regarding claim 18: Srinivasan et al disclose the invention substantially as claimed. Srinivasan et al teach a data mark and recall system in accordance with claim 1. However Srinivasan et al fail to teach a data mark and recall of claim 1, wherein said enhanced additional content is retrieved asynchronously from said marking.

In the same field of endeavor, Allran et al disclose “*receiving asynchronous streamed data from, using an asynchronous receiver transmitter...*” [see Allran; column 17, lines 61-64].

Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Allran et al’s teachings of receiving asynchronous streamed data with the teachings of Bastian et al, for the purpose of improving the ability of a network to handle “*latency factors which are unpredictable regarding buffering streams during transmission*” as stated by Srinivasan et al in lines 59-61 of column 21.

Response to Arguments

5. Applicant’s Request for Reconsideration filed on June 20th, 2005 has been carefully considered but is not deemed fully persuasive. However, because there exists the likelihood of future presentation of this argument, the Examiner thinks that it is prudent to address Applicants’ main points of contention.

A. The Srinivasan reference patent fails to disclose or suggest, a marking system including a marker, separate from said data stream, indicating a particular point in said data stream corresponding to additional data content and, a recall system that allows a user to retrieve additional data content separate from a stream based on the marker.

B. Applicant contends that the rejection of claim 8 under 35 U.S.C paragraph 103 as being unpatentable over Srinivasan in view of Allran is traversed mainly from its dependence on claim 1.

6. As to "Point A" it is the position of the Examiner that Srinivasan in detail teaches the limitations of the above claim1. However, in view of Applicant's remarks, the Examiner is using evidence of the cited prior art to put this matter to rest. Applicant's arguments are unpersuasive for the following reasons:
In column 18, lines 31-35, Srinivasan discloses two data stream instead of one video data streams of the invention. Item 93 of fig. 10 corresponds to the data stream of the invention and Number/marker generator 99 works in conjunction with stream 95 to create the marking system of the invention. The markers/annotations 95 and the number/marker generator 99 and the writer/data inserter, represent the marking system of the invention and are clearly separate from video stream 93 [see Srinivasan, columns 18 and 19]. By this rationale the rejection of claim 1 and all subsequent dependent claims are respectfully sustained.

7. As to "Point B", it is also the Examiner's position that applicants' argument because of the dependence of claim 18 on claim 1 is not persuasive because it is not commensurate with the claims. Claim 1 is a very broad claim when compared with the prior art reference of Srinivasan and the basis for disagreement provided by applicants is not in agreement with fig. 10, a preferred embodiment of the prior art reference. See the rejection of claim 1 above.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

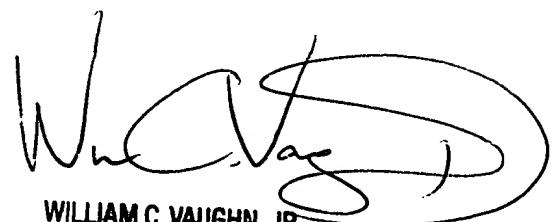
9. Any inquiry concerning this communication or earlier communications from examiner should be directed to Jude Jean-Gilles whose telephone number is (571) 272-3914. The examiner can normally be reached on Monday-Thursday and every other Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-9000.

Jude Jean-Gilles
Patent Examiner
Art Unit 2143

JJG
September 04, 2005



WILLIAM C. VAUGHN, JR.
PRIMARY EXAMINER

